it include resisting a motion to vacate a judgment, *Cranmer* v. *Brothers*, 15 S. D. 234. Nor services in an appeal. *Bartholomew* v. *Langsdale*, 35 Ind. 278. Nor even meeting unexpected opposition in a supposedly friendly suit. *Tong* v. *Orr*, 44 Ind. App. 681. But putting in a counterclaim is so usual a proceeding that the principal case would probably have been decided the same way even if the fee had been a fixed amount. *Lindsay* v. *Carpenter*, 90 Ia. 529.

BANKRUPTCY — EXEMPTIONS — RIGHT OF CREDITOR WITH WAIVER OF EXEMPTION. — A bankrupt had given a creditor a waiver of exemption. By amendment of his schedules, the bankrupt withdrew an insufficient claim for exemption. *Held*, that the exempt property is assets of the bankrupt estate. *In re Baughman*, 183 Fed. 668 (Dist. Ct., M. D. Pa.).

A bankrupt has a right to the exemption allowed him by state law, provided he claims it in his schedules or an amendment thereto. BANKRUPTCY ACT OF 1898, §§ 6, 7 a (8); GEN. ORDER XI, 89 Fed. vii; *In re Berman*, 140 Fed. 761. Courts differ as to whether amendment should be allowed when its only effect is to benefit creditors with waivers of exemption. *Moran* v. *King*, 111 Fed. 730; *Goodman* v. *Curtis*, 174 Fed. 644. The question in the present case is whether such a creditor may claim the exemption if the bankrupt does not. The right of a waiver creditor is not a lien on the exempt property. *In re Moore*, 112 Fed. 289. *Cf. In re Meredith*, 144 Fed. 230. The Supreme Court has called it an "equity" which enables the creditor to obtain a stay of the bankrupt's discharge in order that he may proceed in a state court against the property which the bankrupt has claimed as exempt. *Lockwood* v. *Exchange Bank*, 190 U. S. 294. It would seem not an illogical extension of this doctrine to allow the waiver creditor to claim the exemption when the bankrupt fails to do so. But the courts have not done so, even under state laws which, unlike the law of Pennsylvania, allow a waiver as to a particular creditor. *Moran* v. *King*, *supra*. See VA. CODE, 1904, § 3647; *Bowyer's Appeal*, 21 Pa. St. 210.

CONFLICT OF LAWS — REMEDIES: RIGHT OF ACTION — VENUE OF ACTION FOR USE OF LANDS. — The defendant had been adjudged by an Idaho court to be a trespasser on the plaintiff's land there situated, to which he had claimed title. The plaintiff brought an action in Washington to recover the reasonable rental value while the defendant was in possession. A statute permitted a recovery of reasonable rent if the defendant was in possession without the consent of the true owner. *Held*, that this action being transitory may be maintained in Washington. *Sheppard* v. *Coeur d'Alene Lumber Co.*, 112 Pac. 932 (Wash.).

By the overwhelming weight of authority, actions dealing with wrongs to realty, such as trespass, are local. *British South African Co.* v. *Companhia de Moçambique*, [1893] A. C. 602. *Contra, Little* v. *Chicago, etc. Ry. Co.*, 65 Minn. 48. But if the action is based on contract it is transitory. *Wey* v. *Yally*, 6 Mod. 194. On this theory, the common-law action of use and occupation may be brought where the defendant is found, for it is based on the implied agreement to pay a reasonable rent for this use which the owner has permitted. *Henwood* v. *Cheeseman*, 3 Serg. & R. (Pa.) 500; *Egler* v. *Marsden*, 5 Taunt. 25. The statute in the principal case permits a recovery if the defendant was in fact in possession even though he claimed title and was defeated in an action of trespass. There is thus no consensual relation from which to create a contract, and it is the plainest fiction to imply an agreement to pay rent when the trespasser denies the other's title. *Jackson & Brothers* v. *Mowry*, 30 Ga. 143. It is essentially a cause of action based on a wrong done to the land, and in the absense of an express declaration by the statute that it is transitory, this departure from the ordinary rule is unjustifiable.

CONFLICT OF LAWS — RIGHTS IN PROPERTY — ATTACHMENT OF PROPERTY BROUGHT INTO STATE WITHOUT CONSENT OF OWNER. — A vessel belonging to A was anchored in American waters. By the procurement of B, a judgment creditor of A, its cable was cut so that it drifted into Canadian waters where B had an attachment levied on it. *Held*, that the attachment should be dissolved. *Houghton* v. *May*, 17 Ont. W. Rep. 750 (High Ct., Dec. 15, 1910). See NOTES, p. 567.

CONSTRUCTIVE TRUSTS — LIABILITY OF INNOCENT PARTIES — PROMISE OF CO-LEGATEE. — A legacy absolute on its face was given to three persons as tenants in common. The testator was induced to do this by the oral promise of one of the legatees to transfer the property to a society. *Held*, that the whole legacy is subject to a trust for the society. *Winder* v. *Scholey*, 83 Oh. St. 63.

Where a devise in joint-tenancy is secured by an oral promise of one devisee, unauthorized by his companions, to give the property to a third person, all the devisees hold in trust for the person designated. *Russell* v. *Jackson*, 10 Hare, 204; *Matter of O'Hara*, 95 N. Y. 403, 413. When such a devise is to tenants in common, only the promisor is so bound. *Tee* v. *Ferris*, 2 Kay & J. 357; *Fairchild* v. *Edson*, 154 N. Y. 199. This difference seems unwarranted. When the promise is made the relation of co-tenancy has not begun, so no supposed peculiar doctrines as to joint-tenancy should be invoked. And in each case the title is thrust into the devisees, so there is the same lack of proof of ratification of the acts of the promisor. Moreover, even though co-tenancy exists at breach, a joint-tenant is no more affected by a contract of, or notice to, his companion than is a tenant in common. *Hanks* v. *Enloe*, 33 Tex. 624. See FREEMAN, COTENANCY, 2 ed., §§ 171, 182. *Contra*, *Freeman* v. *Laing*, [1899] 2 Ch. 355. Unjust enrichment must be the reason for raising the trust in either case, and since a tenant in common profits by the fraud as directly as does a joint-tenant, he, too, should be subject to a trust. *Trustees of Amherst College* v. *Ritch*, 151 N. Y. 282. See 21 HARV. L. REV. 286.

CORPORATIONS — STOCKHOLDERS: INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — WAIVER OF LIABILITY. — The defendant took stock in the X company, paying therefor in land, which was accepted at a gross overvaluation. The plaintiff, relying on the representation that the shares had been fully paid for, purchased bonds of the company, each bond containing a waiver of all remedies against the stockholders. The company became insolvent, and this action was brought to recover the balance due on the shares. *Held*, that the defendant is liable, since the waiver was not intended to include any liability for misrepresentation. *Downer* v. *Union Land Co.*, 129 N. W. 777 (Minn.). See NOTES, p. 565.

CRIMINAL LAW — SENTENCE — EFFECT OF IRREGULAR SENTENCE. — After a verdict of guilty in a murder trial, the judge pronounced sentence without the defendant's being asked, according to the statutes, whether he had any legal cause to show why judgment should not be pronounced against him. *Held*, that the case should be remitted for proceedings on the verdict according to the statute. *People* v. *Nesce*, 201 N. Y. 111.

This case overrules a prior decision holding such error ground for a new trial. *Messner* v. *People*, 45 N. Y. 1. The early English practice of not allowing a defendant accused of felony the benefit of counsel may have made this question essential. *Rex* v. *Geary*, 2 Salk. 630. See 1 CHITTY, CRIMINAL LAW, 700. But at present the rights of the accused are so adequately protected that it is a mere form. The decision shows the modern tendency away from the exaggerated desire to protect the accused by taking advantage of any technical error, however harmless. *Cf. Oborn* v. *State*, 143 Wis. 249, 280.